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April 10, 2019

BY ELECTRONIC MAIL AND U.S. POSTAL SERVICE

Mayor Chuck Reynolds
Members of the Oroville City Council
1735 Montgomery Street
Oroville, CA 95965

Re: **Request to Cure or Correct Recent Violations of Open Meeting Act
and to Cease and Desist Ongoing Violations**

Dear Mayor Reynolds and members of the City Council:

I write on behalf of City Council members Janet Goodson and Linda Draper, who were removed from all of their committee assignments on March 19, 2019 without prior notice and without public discussion.

As you know, the Ralph M. Brown Open Meeting Act ("Brown Act") requires every public body to post an agenda at least 72 hours prior to meeting which contains a "brief general description of each item of business to be transacted or discussed at the meeting." (Gov. Code, § 54954.2(a).) Prior to the March 19, 2019 City Council meeting, the City posted an agenda. Item 9 under "REGULAR BUSINESS" contained the following description:

9. APPOINTMENTS TO COUNCIL AND LOCAL COMMITTEES.
Mayor Reynolds *may* make *appointments* to various committees and boards.

RECOMMENDATION. *None.*

Although the description provided in the agenda indicated that some appointments might be made, the Mayor in fact took this opportunity to remove Council members Janet Goodson and Linda Draper from all committee assignments. The agenda item itself is ambiguous as to whether there would actually be any "appointments" but even if read to provide notice of some appointments, the real focus of the Mayor's action was not appointments, but the removal of Council members Goodson and Draper from their committees; the only "appointments" made were those necessary to replace those members on their prior committees. The intent to remove them was not announced in advance and the agenda description was insufficient to put members of the Council and public on notice that members were to be removed from their committee assignments. The misleading nature of this description was compounded by the materials in the meeting packet, which specifically listed Council members Goodson and Draper as serving on several committees through 2020 and suggested that appointments would only be made as "necessary" to fill any openings (none of which were indicated).

In *San Diegans for Open Government v. City of Oceanside* (2016) 4 Cal.App.4th 637, the Court observed that the agenda “must give the public a fair chance to participate in matters of particular or general concern by providing the public with more than mere clues from which they must then guess or surmise the essential nature of the business to be considered...” (*Id.* at 643.) The Court also discussed a case involving a similar agenda requirement for school districts in which that court concluded that a description “though not deceitful, was entirely misleading and inadequate” to describe the intended action. (*Id.* at 644, discussing *Carlson v. Paradise Unif. School Dist.* (1971) 18 Cal.App.3d 196, 200.)

The agenda description for the March 19, 2019 meeting was similarly misleading. The agenda for that meeting indicated only that appointments might be made (although no vacancies appeared on the materials supplied for the agenda item), and it completely omitted the fact that the Mayor intended to remove two Council members from *all* committee assignments. The videotape of the meeting makes clear that the Mayor planned to take actions inconsistent with the agenda descriptions well in advance and used the misleading agenda description to hide his actual intentions. There was no discussion of openings on any committees or commissions; rather, the Mayor simply announced that “we’re going to make some changes on some committees” and then proceeded to read a lengthy list – one obviously prepared in advance of the meeting.

Importantly, Government Code section 54954.2(a)(2)(E)(3) provides that “[n]o action or discussion shall be undertaken on an item not appearing on the posted agenda...” The actions planned and taken by the Mayor did not appear on the agenda for the March 19 meeting. Indeed, if his planned actions had been properly described in the agenda, there would undoubtedly have been citizens present wishing to discuss and possibly oppose such actions.

Certain agenda descriptions for the April 2, 2019 were also misleading, albeit for different reasons. Items 7 and 8 under “REGULAR BUSINESS” contained the following descriptions:

7. CITIZEN APPOINTMENTS TO THE SOUTHSIDE OROVILLE COMMUNITY CENTER ADVISORY COMMITTEE. The *Council* may appoint citizens to serve on the Southside Oroville Community Center Advisory Committee.

RECOMMENDATION. Appoint citizens to the Southside Oroville Community Center Advisory Committee with terms expiring June 30, 2023 and reopen the application process for a period of 30 days to try and fill the open seat on the committee.

8. APPOINTMENT OF TWO MEMBERS TO THE OROVILLE DAM CITIZENS ADVISORY COMMISSION. The *Council* will appoint two members to serve on the Oroville Dam Citizen’s Advisory Commission.

RECOMMENDATION. Appoint two members to the Oroville Dam Citizen’s Advisory Commission.

These descriptions were misleading insofar as both descriptions indicated that the “Council” would make the appointments; instead, the Mayor announced his appointments without any Council discussion at all. He simply stated “my appointment will be...” read his chosen appointments, and announced the next agenda item without affording any discussion.

We also observe that the harm to the public caused by the misleading agenda descriptions for the March 19 and April 2 agenda items was exacerbated by the Mayor’s apparent desire to act unilaterally *without the participation of either the Council or the public*. The supporting materials

for the March 19, 2019 meeting indicated that the Council would “approve” any committee appointments. Similarly, the agenda for the April 2, 2019 meeting indicated that the “Council” would appoint members to the SSOCC and Oroville Dam Advisory Commission. However, the Council took no such action at either meeting; instead, the Mayor used this standing agenda item to make his own appointments (or removals) to various committees or commissions without any vote of the Council or public participation. And, as indicated above, the only “discussion” consisted of him reading his list of appointments. In each case, he then announced that the meeting was “moving on” to the next agenda item, explicitly precluding any discussion by the Council or the public.¹

These actions also violate Government Code section 54954.3(a), which requires members of the public to be given an opportunity to speak “on any item of interest to the public, before or during the legislative body’s consideration of the item.” We have reviewed several videotapes of recent Council meetings and, while members of the public are given an opportunity to address “non-agenda items” early in the meetings and with respect to some public hearings, they have often been excluded from addressing individual agenda items. This was the case regarding the appointments portion of the agenda on both March 19 and April 2, 2019. After some introductory remarks by city staff, the Mayor simply announced the action he wanted to take – there was no opportunity for Council discussion, let alone public discussion. This is contrary to the open meeting requirements of the Brown Act.

Based on the foregoing, we therefore take this opportunity to put the Council on notice that its actions on March 19 and April 2, 2019 violated the Brown Act. We request that the Council take action within the next 30 days to cure or correct the violation of law that occurred on March 19, 2019 when it removed Council members Goodson and Draper from their committee assignments without prior notice and without public discussion. In addition, we believe that the current approach of the Mayor and Council (reflected in both the March 19 and April 2 actions) to exclude any opportunity for public participation on each agenda item is contrary to the requirements of the Brown Act. We request that the Mayor and Council cease and desist excluding opportunity for public comment on each agenda item that contemplates action and that formal action be taken to provide an unconditional commitment to provide an opportunity for public comment on each agenda item.

We trust that the Council recognizes the importance of complying with the State’s open meeting laws and will promptly take action to rescind the March 19 action removing Council members Goodson and Draper from their committee assignments, and that it will also take formal action to acknowledge its obligation to permit public discussion on matters before it.

¹ Although the substance of the Mayor’s actions will be addressed in a separate letter, we point out that Article VI of the Oroville Charter provides that where appointment of any officer is vested in the Council, the appointment and removal must be made by a 5/7 vote of the members. We also note that although the Mayor may make comments or recommendations, the Charter does not give the Mayor authority over appointments. In the absence of express appointment authority in a City ordinance, appointments are within the general legislative authority of the Council.

Mayor Chuck Reynolds
Members of the Oroville City Council
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If you fail to take action to implement the requested actions within the next 30 days, your failure will be treated as a refusal to do so and may subject the City to legal action, including an award of costs and attorney fees, to enforce the provisions of the Brown Act.

Sincerely,

Very truly yours,

OLSON HAGEL & FISHBURN LLP



DEBORAH B. CAPLAN

DBC

cc: City Attorney Scott Huber
City Clerk Jackie Glover
Interim City Administrator Tom Lando
Interim Asst. City Administrator Bill LaGrone
Council Member Linda Draper
Council Member Janet Goodson